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STATEMENT

In the Matter of

the Hearing with respect to Condition 12 (1)

of the Northern Pipeline Act

MAY 1980





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IN THE MATTER OF the National Energy Board  
Act and the Northern Pipeline Act; and

AND IN THE MATTER OF a public hearing with  
respect to Condition 12(1) of Schedule III  
of the Northern Pipeline Act; File No. 1045-4

HEARD IN Ottawa on:

29 and 30 April and 1, 5, 6 and 7 May 1980.

BEFORE:

C.G. Edge  
L.M. Thur  
R.B. Horner

Presiding Member  
Member  
Member

APPEARANCES:

J. Lutes	)	
C.W. Sanderson	)	Foothills Pipe Lines (Yukon) Ltd.
J. Hopwood, Q.C.	)	Alberta Gas Trunk Line Company Limited
S.A. Wakefield	)	ANB Gas Company
	)	United Gas Pipeline Company
J.B. Ballem, Q.C.	)	Canadian Petroleum Association
G.D. Nichols	)	Consolidated Natural Gas Limited
	)	Northern Border Pipeline Company
	)	Northern Natural Gas Company
J.H. Smellie	)	Dome Petroleum Limited
E.F. Ryan	)	Imperial Oil Limited
J. Moriarty	)	
A.E. Potter	)	Independent Petroleum Association of Canada
E.B. McDougall	)	Northwest Alaskan Pipeline Company
J. Lutes	)	Pan-Alberta Gas Ltd.



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D.G. Hart	) ProGas Limited
W.T. Houston	) Tennessee Gas Pipeline Company
H. Soloway, Q.C.	)
J.H. Farrell	) The Consumers' Gas Company
L.H. Pilon	) TransCanada PipeLines Limited
A. Butler	) Union Gas Limited
R. Salter	) Union of British Columbia Indian ) Chiefs
I. Waddell, M.P.	) Himself
J.M. Johnson	) Ministry of Energy for Ontario
W.J. Klassen	) Government of Yukon
K.J. MacDonald	) National Energy Board
A. Bigu�	)





STATEMENT OF CONDITION 12 OF SCHEDULE III  
OF THE NORTHERN PIPELINE ACT

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The Board, having heard evidence and argument in relation to Condition 12, as amended by NPO-2-80 which is subject to Governor in Council approval, of the certificates of public convenience and necessity issued to subsidiaries of Foothills (Yukon) wishes to make the following statement.

The Northern Pipeline Act, in the opinion of the Board, requires the building of the whole of the pipeline in Canada; in other words, it is an integrated project. In the Board's view the Act does not prohibit the building of the pipeline in two stages; for example the southern part first and the northern part later. It does require that there must be a commitment to the whole of the pipeline in Canada before construction could start on prebuild facilities. This in turn means a commitment to the whole of the pipeline in both Canada and the United States.

The realities of the financial community are such that it is unlikely that financing will be in place for the second stage construction before the construction of the first stage has begun. In the Board's view this does not negate the fact that the construction of the Foothills (Yukon) pipeline is a fully integrated two-stage project. The integrated nature of the project depends on adequate assurance of commitment to the total project. That is what Condition 12 is all about. It is clear to the Board that certain pre-conditions requisite for the financing of the pipeline in Canada have not yet been fulfilled.





There are three issues of major concern in this Hearing and one other issue on which the Board has reservations. The Board wishes to draw these matters to the attention of all parties before the Board makes any finding on Condition 12.

The first major issue relates to the start of the tariff and the categorical and repeated statement made by Foothills (Yukon) that when its pipeline to carry Alaska gas is complete and approved for service, it wishes to be paid in full for its service; otherwise its sponsors will not be willing to commit equity to the project and Foothills (Yukon) would not build the pipeline. Payment for services when the pipeline is ready, is permitted under the tariff provisions of the Northern Pipeline Act. Both the current FERC and NEB previously approved tariffs provide for a potential temporary abatement of certain charges during the initial start-up of the flow of Alaska gas.

The FERC has not yet been asked if it would authorize the "tracking" of the requirement of Foothills (Yukon) for full payment on completion of the pipeline, which is the preferred position of Foothills (Yukon), and Foothills (Yukon) recognizes that there may be other means of achieving its goals based on the presently approved tariff. In its decision on Phase IV(b) of the Tariff and Financing Hearing, the Board approved in principle the application of Foothills (Yukon) for a tariff based on payment of the full cost of service when leave to open has been granted for



the whole of the pipeline in Canada. As an alternative, if supplementary financing is arranged to meet the requirements of Foothills (Yukon) that it be paid in full when able to provide service, the Board's approval in principle of the previous Foothills (Yukon)'s tariff containing a 60 day delay, minimum bill and interim rate is left unchanged. Since the tariff and its tracking are said by Foothills (Yukon) to be keys to financing the pipeline, the Board cannot make a finding on Condition 12 in the absence of a clarification of this issue. The Board wishes to know that there are credit worthy parties willing to pay the tariff in the form proposed. This statement is made in the knowledge that the Canadian Government wishes to consider all matters relevant to the authorization of prebuild facilities by the end of May or early June.

The second issue relates to all aspects of the "tracking" of the Canadian tariff by United States regulatory authorities. The FERC has stated in principle that it will authorize tracking of the Canadian tariff and has addressed certain specific issues of tracking U.S. pipeline company tariffs, but has not yet ruled on the Foothills (Yukon) tariff as previously approved by the NEB. This is understandable given that the NEB Tariff Hearings have only just finished. The Board would like to know as soon as possible that the FERC is willing to authorize the "tracking" of the Canadian tariff.





Since the authorization of tracking by the FERC is said by Foothills (Yukon) to be a key to financing, the Board must be satisfied that the tariff can be tracked before it can be satisfied that Condition 12 has been fulfilled.

The third and fourth issues relate to "assured throughputs" for the pipeline, another key to its financing. On the third major issue, the Board, with the approval of the Governor in Council, has already issued licences committing significant export volumes to the pipeline and has recently recommended that the Governor in Council approve further volumes, already declared surplus, for export through prebuild facilities. There remains about 10 to 15 billion cubic metres (400 to 500 Bcf) of throughput needed to assure the financing of the Eastern Leg. This throughput could be achieved by transferring part of Progas and Consolidated volumes, presently committed to the TransCanada system. Both Consolidated and Progas have requested that Monchy, Saskatchewan on the route of the prebuild pipeline be added as an export point in their export licences. Consolidated has now undertaken to commit to ship the requisite volumes through the line of about 5 billion cubic metres (180 Bcf). ProGas has not yet done so and indicated in evidence that it could be one or two months before its United States customers were ready to do so. ProGas has frequently re-interated its intent to facilitate the financing of prebuild facilities. The





letter of the United States Secretary of Energy to the Chairman of the Federal Energy Regulatory Commission, dated April 24, 1980 states on page 1:

"Finally, completion of the prebuild portions of the system by 1981, and their successful operation during the early 1980's will facilitate private financing of the remainder of the System".

The Board understands that this timetable will require a decision on whether or not to proceed in June. In the Board's opinion, the prospect of a significant delay in the prebuilding of the eastern leg could be prejudicial to the prebuild project and to the whole of the Alaska Natural Gas Transportation System. The negotiations of the United States Progas customers with the partners of Northern Border have been protracted but in the opinion of the Board should be capable of quick resolution. When the customers of ProGas have made a decision, the import at Monchy and the transportation of the gas on the Northern Border System will still require authorization from U.S. regulatory authorities. The Board urges the parties to arrive at a decision, in the near future in order that the Governments of both countries can deal effectively with the issue of prebuilding part of the Alaska Natural Gas Transportation System.

The final issue relates to doubts cast on the "assured throughputs" by one aspect of the FERC decision on Northern Border. On page 64 the Decision states:



"In the expectation that a cap on the take-and-pay obligations at \$3.45 per MMBtu will provide adequate revenues to support producer investment, the Commission adopts the following conditions to the import authorizations provided herein:

- (1) The Buyer's obligation under Article IV.A.3 of the Pan-Alberta gas supply contract is limited to U.S. \$1,380,000 per day (800,000 Mcf/day x \$3.45/Mcf x 50 percent).
- (2) The Buyer's obligation under Article IV.A.4 of the Pan-Alberta gas supply contract is limited to U.S. \$856,290,000 per year (800,000 Mcf/day x 365 days x \$3.45/Mcf x 85 percent)."

The letter from the United States Secretary of Energy, already mentioned, states on page 3 that:

"When acting on minimum take requirements, it is essential that the commission consider the effect of such requirements on our policy that imports of Canadian gas continue to be competitive with alternative fuels in U.S. markets."

The FERC appears to have used the U.S. \$3.45 (\$3.22 per GJ) price because it was the price of gas exported from Canada at the time the FERC proceeding closed and was known to be competitive with alternative fuels. However, the price of imported crude oil had risen by the equivalent of \$1.00 per GJ (\$1.00 per MMBtu) when Canada subsequently increased its border price to U.S. \$4.17 per GJ (\$4.47 per MMBtu) and the price of imported crude oil has increased again since then. The FERC acknowledges that the Energy Regulatory Administration is presently studying the marketability of Canadian gas and will announce by May 15, 1980 whether it will make permanent its temporary import permits issued in February at a price of U.S. \$4.17 per GJ (\$4.47 per MMBtu).





If it does so, this will confirm the marketability of Canadian gas at the current price. If it does not do so, the FERC decision states at page 54:

"In the event that the Administration does not approve the importation of any natural gas from Canada at a border price of \$4.47, then the import authorization granted herein will be further limited by a condition that the price of the gas to be imported in connection with the prebuild of the Northern Border segment be adjusted downward to the highest price for imported gas approved by the Administrator of E.R.A."

The FERC further states, on page 53, that:

"The Commission believes that ERA's findings in Opinion and Order 14 are relevant to the Commission's consideration here."

It is likely to become evident by May 15, 1980 that the Commission's use of \$3.45 as a test of marketability is out-of-date and therefore not in conformity with the criterion of the U.S. Secretary of Energy mentioned earlier. Secondly, the FERC decision to use \$3.45 appears to be, in part, based on the assumption stated on page 60, footnote 71, as follows:

"As this test is based on deliverability from established reserves, the Commission assumes that no field development expenditures are required as part of the projects."

Evidence to the contrary was adduced in the present proceedings. The Pan-Alberta producer contracts were for 12 years but the export licences are only for 6 years in the Eastern Leg and 8 years on the Western Leg. Both the Pan-Alberta and the Progas producers, as well as the Independent Petroleum Association of Canada, indicated that the amount of gas available





to the pipeline would be reduced if the minimum payment based on U.S. \$3.45 per MMBtu's were to prevail. All sought a modification of this condition and that it reflect current market values for the year to which it would be applied.

While the FERC decision should not cause a reduction in licenced volumes if they are competitive with alternative fuel prices, it could cause doubts in the perceptions of investors. On page 62 the Commission states:

"Under this modification, the obligation of the U.S. purchasers to take gas would go down if the border price went up."

The above situation has to be set in the context that financing for Northern Border (and also Foothills (Sask)) has not yet been demonstrated. Canada has provided potential major support of "assured throughputs" for Northern Border by the NEB recommendation of additional export licences, and by TransCanada's backstopping throughput agreement using Canadian gas. A Canadian company and a Canadian bank are also planning to provide significant equity and debt capital to finance Northern Border. Any perception of a weakening of the assurance of throughput in the FERC decision would seem to be out of harmony with the Canadian contribution enumerated above.

For the above reasons; the Board believes it to be desirable that reconsideration be given by the FERC to the minimum payment provision of its Northern Border Decision based on:

- (a) the criterion of marketability required by the U.S. Secretary of Energy,









